



February 9, 2005

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th St., SW  
Suite TW-A325  
Washington, D.C. 20554

Re: **WC Docket No. 04-440**

This is a detailed response to the In the Matter of Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. 5 160(c) from Title II Computer Inquiry Rules with Respect to and Broadband Services

There are about 2500 Independent Internet Services Providers in the US today. Many will not comment on these dockets for the following reasons:

- 1) do not know about the petitions
- 2) do not understand the petitions
- 3) feel that commenting to the FCC is futile
- 4) daunted by the whole process

Most consumers do not comment for the same reasons. Today, I will try to give them a voice.

Verizon petitions for forbearance on broadband. Let us call it what it is though – Verizon is asking for unregulation of broadband transport facilities. Verizon is asking the FCC to give it more money.

Verizon Telephone Companies sell transport; Verizon Online sells transit. Transit is already unregulated. Transport is regulated and tariffed – as it should be for a utility and natural monopoly.

Verizon is asking the FCC to stop overseeing its telecommunications service offerings used primarily for broadband internet access. xDSL has uses other than internet access, such as a tele-worker connection to a corporate A/S 400 server to place customer orders or read a CRM application. Verizon is asking for a Layer 1 physical facility to be unregulated and removed from the tariff. This is a common carriage element no different than a phone line. For indiscriminate access, it must remain regulated.

Verizon is asking for more than the unregulation of DSL: it is also petitioning for forbearance on Frame Relay and ATM. It has already received the green light on Fiber. The petitions by this RBOC boil down to this: Don't regulate any of our data facilities.

I believe the Telecom Act addressed data facilities. There were packet-switched networks even then (X.25, anyone?). There wouldn't be a need for the FCC if the FCC Tariff is going to be gutted.

The RBOCs are like rich, spoiled kids constantly wanting more and more without giving anything back. Divestiture meant the Baby Bells could only offer Local service. Not happy with that, they received CPE and Enhanced Services (which we fight over to this day). Still not enough, so the Baby Bells are granted Long Distance. What you want more? Okay, the Baby

February 9, 2005

Page 2

Bells were granted FTTx forbearance. Still not enough, now they want forbearance on ALL data network elements!

As the legal guardian, the FCC is required to ensure that regulations are followed, not dissolved.

Verizon and its RBOC sisters talk about the "one-wire" world that is antiquated. There IS only one-wire – the PSTN. Not every home has cable. Cellular coverage – owned primarily by ILECs - is spotty. Fixed wireless is even less reliable than cellular service. BPL is still in test phases. Satellite is also ran. Only electric and telephone wires hit almost every premise.

Stan Wise, president of NARUC and a commissioner on Georgia's PUC, is quoted in Broadband Properties magazine (Nov., 2004, pg 48), "In Georgia, we unbundled the natural gas industry, which impacted the low income folks, and we are still paying for it eight years later." This is just one example of deregulation of a utility affecting the consumer for years.

The RBOCs are not asking for Forbearance in order for them to deploy more broadband. The Forbearance, especially for FTTx, was in order for the RBOCs to squeeze every nickel out of the consumers in the communities most likely to buy.

In Tampa, Verizon is laying fiber in Carrollwood, South Tampa, and Keystone. These are your above average households income-wise. This forbearance is not to deploy broadband, it's to offer triple-play – not anything innovative, just me-too services to fight with the Jones (the cablecos). And these areas in Tampa already have DSL service. So when you gave them forbearance, it wasn't to help bridge the digital divide – it was to help Verizon get more money in its pockets.

The ILECs are a utility and own a natural monopoly. Utilities need to be regulated for the public good. From FCC-02-42A1, "The Communications Act of 1934, as amended ("the Act") gave the Commission extensive authority over all "common carriers," which the Act defined to include all persons "engaged as a common carrier for hire, in interstate and foreign communication." Title II of the Act requires, inter alia, "that common carriers provide service at just and reasonable prices, and subject to just and reasonable practices, classifications and regulations; that they make no unjust or unreasonable discrimination; that they file tariffs, subject to Commission scrutiny; and that they obtain Commission approval before acquiring or constructing new lines."

It is being asked that the Commission continue to regulate broadband telecommunication services (xDSL) for the public good. Title II and the Computer Inquiries are designed to protect small businesses. Small businesses are the life blood of the economy.

Today's telecom industry resembles the environment when the DOJ sued AT&T for anti-trust. Only today instead of one national monopoly, AT&T, we have 4 regional monopolies, who are in fact larger in market size than the original AT&T. One is about to swallow AT&T; while one is ready to swallow MCI. The reasons for the DOJ action were the following:

- 1) the pricing and access strategies of AT&T were designed to destroy competition
- 2) the Incumbent carrier was deemed an unfair monopoly and detrimental to the telecom industry

Verizon states that "competition will insure that [their] network is available to wholesale customers at reasonable prices". It's available now through tariff pricing, but that only works if the RBOC isn't cross-subsidizing.

### **Customer Proprietary Network**

CPNI rules that every RBOC employee and contractor must know and follow are routinely ignored. This from BellSouth's CPNI Guide: The FCC has established three categories of telecommunications services. These are:

- Local TSC, which includes local telephone service and, if provided by BST, intraLATA toll
- Wireless TSC, which includes analog and digital cellular service, PCS (Personal Communication Services) and paging services
- Long-distance TSC, which includes interexchange service, intraLATA toll (if provided by BSLD) and interLATA toll.

A fourth category is called the Non-Telecommunications Service Category. You must have the customer's approval to use CPNI to target a customer to sell Non-TSC products and services.

This category includes:

- Voice mail, voice storage and forward
- FAX storage and forward
- Other information services
- Internet access services
- Customer premises equipment (CPE)
- Yellow Pages
- Managed network services
- Inside wiring
- Conferencing services
- Accessories, insurance, equipment maintenance plans

"If RBOC's Total Service Relationship with a customer is defined by the services in a TSC or the combination of TSCs the customer buys from RBOC. For example, if a customer has only local service with RBOC, then the TSR is limited to local service only. If the customer has local and wireless services with RBOC, the TSR includes all services in the local and wireless TSCs. TSR does NOT include Non-TSC products and services the customer buys from RBOC."

If the consumer is with an IISP, the RBOC personnel would need permission to target them for a promotion for DSL. Not in reality. You will find numerous instances where the RBOC has used its position to squeeze the ISP out. Why would they do this when they in fact make more profit from wholesale DSL?? Plain greed and avarice.

Other CPNI rules:

"Treat customers who are also competitors fairly and at "parity.""

"Do not interfere with any contract between a competitor and its customer."

"RBOCs and authorized sellers cannot use information about the services we provide to other carriers to retain or reacquire end-user customers."

Yet this does happen and you will find instances of this if you called any IISP in the country.

I live in Verizon region. I have been slammed for DSL twice. All it takes is to call Verizon for any reason and use the letters D, S and L in a single sentence. For example, "Do not send a technician till later." Boom... DSL modem in the mail; billing starts now.

Verizon currently offers retail pricing promotions on VOL DSL below Time-Warner cable and at wholesale DSL rates. Every BOC has similar pricing strategies. Even at prices less than cable, people aren't switching. So how is forbearance going to help that situation?

Price is not everything obviously. Consumers need choices. Consumers need broadband availability. Consumers want innovation. Innovation is more than a bigger pipe. Innovation is where IISPs, content providers, VoIP players, and other entrepreneurs come in.

But if there are only two pipes available, both from monopolies, do you think that the innovators will have a chance? Did small innovative software companies have a chance against Microsoft? No.

Communities need broadband in order to compete nationally and globally. If the petition for forbearance meant that every premise in America would have a fat pipe by 2006, that would be something. But it doesn't mean that. It doesn't even come close to saying that. And if it did, what would be the penalties, if the RBOCs said one thing and did the opposite?

What is the FCC trying to do? Seeking ubiquitous broadband? A level playing field? Low prices for consumers? None of those things are covered by this petition, so let's just throw it out.

"Imposed competition built the Internet, drove long distance prices down and added a host of enhanced services to the benefit of the body public—consumers. Everything has gotten cheaper except local dial tone provided by the local telephone monopoly."

### **History and technology**

History and technology will explain why wireline DSL is behind cable. First, the technology of ADSL has an imposed limit of 18,000 feet from the DSLAM. ADSL must be on a "conditioned" copper pair; one without load coils, DLCs or DMALs, which are common occurrences in many areas. DSLAMs and mini or remote DSLAMs were needed to be deployed in Slicks or Remote terminals to get closer to the consumers, within the 18000 feet boundary. While ADSL technology, namely ADSL2 and ADSL+, is improving, these limitations have left wireline DSL behind in its ability to reach consumers.

I would like to point out that the RBOCs had xDSL technology for a long time before it was deployed. It was Northpoint, Rhythms, and Covad (the DLECs) that first deployed SDSL to small businesses, waking up the sleeping giant by attacking its highly profitable \$1200 T1 business.

VOIP technology has been around as a result of the calling card industry and was taken to the consumer by Vonage, not by either of the duopolies.

History will tell you that the RBOCs not only started rolling out ADSL later than cable modem, but continually used its ADSL roll-out as a political bargaining chip. Since 1999, the RBOCs have promised again and again to deploy both xDSL and FTTH for state and federal backing. These politics are what has hurt our broadband deployment, not whether or not RBOCs have to share the network.

Moreover, Verizon is in litigation over its continued promise for broadband deployment in Pennsylvania. Promises it has never kept. Let us point out that had Verizon rolled out broadband as promised in 4Q04, Philadelphia would not be in a battle with Verizon over a proposed wireless project for the city. It is obvious that it CAN be done, but the duopoly needs to be mandated or pushed to do it. Both cable and ILEC have already been paid to deploy it.

Indeed, many municipalities have been stymied by the RBOCs over muni fiber deployment or other broadband projects. The RBOCs actions have spoken very loud: the only digital divide it sees is one it owns and operates exclusively. This is detrimental to this country's economy. And who will pay for it? The consumer, as always.

We are now, according to MSNBC (<http://www.msnbc.msn.com/id/5954229/>), 10th in the world in broadband. Will we continue to let the BOCs keep us in the digital dark?

It has been the delayed deployment as well as the technological limitations of ADSL that have resulted in wireline ADSL amassing a smaller market share than cable modems. No provisions of the TA96 have stymied these efforts.

February 9, 2005

Page 5

"However, Theodore Vail, the President of American Telegraph & Telephone (AT&T), sought to avoid competition by establishing a new principle: that of a natural monopoly. He argued that it would be unwise to allow competition in the deployment of telephone networks, and permit a number of independent telephone systems to develop in the same city, each competing with each other: both for customers and for space to string their wires. The idea he proposed--that of a natural monopoly or public utility--was that there should be only one telephone company and that, since it would be a monopoly, it would be regulated by the government in order to protect the consumer." (<http://www.ims.ccsu.edu/Tele.htm>)

On page 7, Verizon writes, "As part of its FTTP rollout, Verizon plans to pass three million homes and business by the end of 2005. Accordingly, Verizon intends not only to increase competition and improve the broadband services they are providing to consumers, but also intends to bring new competition into markets like video where cable continues to dominate."

In that statement, is Verizon offering innovation? Is Verizon offering to deploy broadband in areas that do not have it yet? No. It wants forbearance to compete head-to-head with cable in the top 25 MSAs. The RBOCs already have forbearance of FTTx to do that.

The RBOCs agenda is not to bring innovation, customer service or deployment. It is simply to increase its coffers.

The petition discusses ATM and Frame Relay, AT&T and MCI. Enterprise customers go with the Big 3 (AT&T, MCI, and Sprint), because they are Tier 1 providers with a national footprint and a staff of knowledgeable network engineers. Three things that cannot be said of Verizon, BellSouth, nor SBC. Plus SBC and Verizon are buying them, so forbearance on Frame and ATM is irrelevant.

The petition discusses video. Why? Video is sold over fiber. Forbearance was already granted. It seems most of this petition was just "throw-it-against-the-wall-and-let's-see-what sticks". Isn't this abuse of process?

Consumers want Innovation.

Competition drives innovation.

Independent ISPs offer training to teach consumers how to use the internet. Libraries, schools, rural areas and charities all benefit from the independent ISP being in business.

ISPs work with NASA, the DOD, open source projects, security concerns, and the like. These projects directly and indirectly benefit the consumer.

BellSouth outsourced its e-Commerce services to EDS and NTT/Verio.

In the cell phone market, the innovation is coming from the CPE manufacturers (to sell more phones). It is not coming from the ILECs who own the network. The network to the RBOCs is the pipe to the consumer to be controlled.

Most consumers want to know as much about the workings of telecom and the internet as they know about their car. If the consumer turns it on, it works – and does what it is supposed to do. Are the BOCs going to help bridge the digital divide? Most of the broadband penetration is in upper income areas. It will again be the independent ISP who brings affordable access to the information superhighway to anyone who wants it.

February 9, 2005

Page 6

In today's age of always-on connections and Windows insecure operating systems, consumers are often overrun with malware, trojans, and virii. This influx of infected computers leads to harm for everyone connected to the internet through denial of service and spam attacks from these zombie machines. It is the independent ISP company that works with consumers to clean and prevent these maladies (spyware, virii, etc.).

Bobette Kyle said, "According to Digital Risk Specialists mi2g, SoBig alone was responsible for nearly 91% of the \$32.8 billion in economic damages caused by viruses and other system attacks." <http://www.websitemarketingplan.com/Arts/WormVirus.htm>

These incidents are growing. Cable and ILEC answer back with shutting off access to ports indiscriminately. This harms consumers. One day your Cisco VOIP phone works; the next day your cable company has closed port 62 and your phone cannot talk to the TFTP server, so it doesn't work.

This also leads to the question: If only the duopoly control access to the internet, won't they also control the content and what the consumer can use the broadband pipe for?

### **Section 10**

- 1) "not unjustly and unreasonably indiscriminately"
- 2) "protection of consumers"
- 3) "public interest"

I will grant that in the short-term, prices will come down, like cell phone usage has, until the market saturates, then prices will rise like local phone service, if forbearance is granted.

As pointed out in comments to both BellSouth and Verizon's petitions, there are many examples of the RBOCs showing unjust and unreasonable discriminatory practices towards its customers (the ISPs) to the detriment of the consumer. When the RBOC fights over the consumer with an IISP (while not fixing the circuit), who is losing? The consumer. This happens very often.

To protect the consumer, the FCC must continue to regulate any broadband transport elements.

The RBOCs have already demonstrated that the public interest is not their concern by the following actions:

- 1) fighting municipal broadband initiatives
- 2) political gamesmanship about deployment without deploying
- 3) litigating, petitioning, lobbying, and getting fined in place of deploying what was agreed upon
- 4) letting the US slip from the number one internet economy to number 10

Choice is always preferred. Wasn't AT&T broken up to give consumers choice in LD? How is choice in internet providers any different today? We have lots of choice in dial-up internet access, but not in choice for broadband internet access, especially if this petition is granted.

What if Wal-Mart only allowed two brands of each item on its shelves – and one of them had to be its own brand? Would consumers still shop there? Some would due to the low pricing, but many would not (unless there was no where else to shop).

February 9, 2005

Page 7

This is what is proposed for the internet. As it is, cable is like that – cable house brand or EarthLink. It is not in the public interest to leave the internet in the hands of two monopolies. The monopolies can offer a fat pipe to the internet for consumers, but not much else.

The cell phone manufacturers know that it has to sometimes create a new market to sell more product. Examples are video phones and Push-to-talk. This wasn't the ILECs cellular division asking for these features. Innovation comes from outside – and from direct competition.

Do you think the USA would have made it to the moon in 1969 if it didn't think the Soviets might get there first?

Telecom is a natural monopoly. Even the President of AT&T knew that it needed to be regulated to protect the consumer

The RBOCs complain about the costs of regulation, but they chose to enter new markets like LD and Internet. And they have captured huge market share in each space.. Now they want the deal changed. So do I. I want enforced regulation of TA96 and Computer Inquiry I,II,&III. Imagine what the landscape would look like if there was indeed a level playing field.

**"Deregulation should never be no regulation.** Free markets are ever changing, and players are always devising new mischief. Government must remain vigilant of abuses and respond swiftly." Consumer Union.

According to FCC-02-42A1, "Broadband deployment is the central communications policy objective in America." Then mandate that the ILECs and Cablecos deploy broadband by 2006 or face billion dollar fines.

If the Commission's take is that deregulation will result in more broadband deployment, please examine states that have had broadband deregulation like KY and SC to see if deregulation has improved the broadband deployment? I think you will find that it has not.

The call for structural separation has been heard often in the last couple of years. In fact, Pennsylvania was examining separation for Verizon before LD relief was granted. Think about that. It is so bad to be a wholesale customer of Verizon that often the only remedy is to separate it.

"While there seems to be a disconnect between some opposing commenters' words and deeds, this much is clear: since the Commission first began formally collecting broadband data in 1999, broadband speeds have increased, broadband prices have come down, new broadband providers have entered the market, and broadband services are being offered to ever greater numbers of residential and business customers.17"

HENCE, LEAVE THE SYSTEM EXACTLY AS IT IS, BUT WITH MORE ENFORCEMENT.

Regards,

Peter Radizeski  
RAD-INFO, Inc. – NSP Strategist  
Telecom Consultant  
813.963.5884